

HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA**AND****HON'BLE SRI JUSTICE K.C. BHANU****P.I.L.Nos.28 and 38 of 2013****P.I.L.No.28 of 2013**Between:

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K. Padmanabhaiah
S/o. Late K. Janakiramaiah,
Aged about 74 years, Occ: Retired,
H.No.8-2-684/1/14, Road No.12,
Banjara Hills, Hyderabad and others.

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..... Petitionersand

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1. Government of Andhra Pradesh
General Administration Department,
Secretariat, Hyderabad, rep. By its
Principal Secretary and others.

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..... Respondents

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HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA**AND****HON'BLE SRI JUSTICE K.C. BHANU****P.I.L.Nos.28 and 38 of 2013**

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COMMON ORDER:

(Per Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

Both the Public Interest Litigations have been filed seeking issuance of writ of Mandamus or any other appropriate writ declaring the selection and appointment of respondent nos.3 to 6 as State Information Commissioners to the second respondent Commission as arbitrary, illegal, unreasonable, without application of mind, contrary to the provisions of Section 15(3) (5) and (6) of the Right to Information Act, 2005 (hereinafter referred to as 'the said Act') and the Judgment of the Hon'ble Supreme Court in the case of **NAMIT SHARMA v. UNION OF INDIA** ^[1] and violative of Articles 14 and 16 of the Constitution of India, and

for setting aside G.O.Ms.No.75, General Administration, (RTIA/GPM&AR) Department, dated 06-02-2013 issued by the first respondent.

2. Bereft of unnecessary detail fact, the sum and substance of the allegation of the petitions is as under:

By the impugned orders, the first respondent appointed respondent nos.3 to 6 to the office of the second respondent Commission as State Information Commissioners. According to the petitioners, the decision making process adopted by the Selection Committee is not in accordance with the provisions of the said Act and lacks transparency and fairness. One of the Members of the Selection Committee, namely the Leader of the Opposition, raised objection suggesting to constitute a Search Committee and did not sign the minutes of the meeting. Without taking note of said objection and without having his signature, the Selection Committee has chosen respondent nos.3 to 6 as Information Commissioners.

As a matter of fact, His Excellency the Governor of Andhra Pradesh sent back the file for reconsideration to the Selection Committee. In spite of the same, the Selection Committee, without considering the objection raised by His Excellency the Governor, illegally had chosen respondent nos.3 to 6 as above. In view of the Court orders passed in the previous writ petitions, His Excellency the Governor approved and signed the same.

3. Apart from the above infirmity and illegality in the decision making process, the petitioners have questioned the competency as to their qualification in the manner as follows:

Respondent No.4 is a political personality as he has been Congress Party leader for several years and three Ministers recommended his appointment as Information Commissioner. Respondent No.5 belongs to political party as he contested 2009 elections on TDP ticket against the present Chief Minister from Pileru Constituency in Chittoor District. Respondent No.6 is political party leader

as he contested 2009 elections from Nuzvid Constituency in Krishna District on behalf of Praja Rajyam Party. The other two respondents likewise above three respondents also belong to Congress Party. Respondent Nos.3 to 5 are Advocates apart from their political allegiance. Thus they are disqualified under the provision of Section 15(6) of the said Act for appointment as Information Commissioners. It is further stated that the selection and appointment of respondent nos.3 to 6 as State Information Commissioners has been made without advertisement and without preparation of panels, which is contrary to Articles 14 and 16 of the Constitution of India and the Judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra).

The recommendation made by the Committee for their appointment was once rejected and returned by His Excellency the Governor. As per the Judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra), the first respondent was mandated to prepare the panel from among the applications received after due advertisement and on a rational basis as declared therein.

However, no such exercise was undertaken in the present case. Prior to the appointment of respondent nos.3 to 6, the second respondent was filled up with one State Chief Information Commissioner and four State Information Commissioners and all of them are only Expert Members and there was no Judicial Member, though appointment of Judicial Member of the second respondent is mandatory requirement as per law declared by the Supreme Court. However, the first respondent did not make any attempt towards appointment of Judicial Members to the second respondent. Hence, appointment of respondent nos.3 to 6 was made without complying with direction No.8 of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) and hence, the appointment is illegal and invalid. The selection and appointment of respondent nos.3 to 6 was made without any proper exercise to consider various applications received by the first respondent and their selection was not on relative comparison of the

merit, but based on extraneous considerations and the minutes do not disclose any such due exercise of selection process. Therefore, the selection and appointment of respondent nos.3 to 6 is arbitrary, unreasonable and without application of mind.

4. The first respondent, in order to contest the petition, has filed counter affidavit. In the counter affidavit, it is stated that one R. Chandrakanth Rao filed W.P.No.11295 of 2011 before this Court for taking immediate steps to fill up the vacant posts of Information Commissioners in the State of Andhra Pradesh, so as to enable the Commission to discharge its constitutional and statutory obligations and to enable the citizens to receive the benefit of the said Act. Another writ petition being W.P.No.31894 of 2011 was filed by one Ms. G. Bhargavi for similar relief as sought in W.P.No.11295 of 2011. In the said two writ petitions, a common counter affidavit was filed by the State of Andhra Pradesh informing this Court that the process of selection was going on and the said Commissioners would be appointed by 28-02-2012.

An additional counter affidavit was filed in those writ petitions further informing this Court that the Selection Committee consisting of the Hon'ble Chief Minister, Hon'ble Deputy Chief Minister and Leader of Opposition as Members have met at 4-00 PM on 31-01-2012 in the Chambers of Hon'ble Chief Minister and that 8 persons from the applicants list were selected. It is also stated that notarised affidavits from the 8 selected candidates have been received and the file was sent for circulation to His Excellency the Governor for approval.

In view of the same, W.P.No.11295 of 2011 was disposed of by this Court on 21-03-2012 wherein this Court took note of the recommendation made by the Selection Committee for the appointment of State Information Commissioners. The list of 8 persons selected by the Selection Committee has been sent to His Excellency the Governor, who was pleased to approve and appoint 4 persons as State Information Commissioners, and directed for examining afresh by the

Committee with specific reference to the provision of Section 15(6) of the Act in respect of the remaining 4 persons, who are respondent nos.3 to 6 herein, in view of the representations received from various walks of life including the civil society activists.

Then respondent nos.3 to 6 filed W.P.No.23577 of 2012 before this Court seeking a direction that the Government of Andhra Pradesh should take steps to conclude the process of their appointment to the post of State Information Commissioner under the said Act. The said writ petition was disposed of by this Court on 18-09-2012 directing respondent nos.1 and 2 therein to consider and take appropriate decision in the matter of petitioners, namely respondent nos.3 to 6 herein, in accordance with law particularly with reference to Section 15(6) of the said Act, as construed by the Hon'ble Supreme Court in the case of *Namit Sharma* (supra). It is further stated in the counter affidavit that there is no conflict of interest in appointing respondent nos.3 to 6 as State Information Commissioners for the reason that the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) upheld the constitutional validity of Sections 12(5) and 15(5) of the said Act. Further, the Hon'ble Supreme Court held that the provisions of Sections 12(6) and 15(6) of the said Act have the effect 'post appointment'. It is further stated that the Selection Committee, while making recommendation in the meeting, dated 31-01-2012, had considered the candidature of 153 applicants including the applications of respondent nos.3 to 6 herein. The Committee examined in detail the bio-data of all the applicants with special reference to their background, experience and competence in the respective domains and after going through the details available in respect of the applicants and assessing the comparative merit and experience, the Committee was of the view that these persons were suitable, and recommended for being appointed as State Information Commissioners. The Selection Committee under the said Act is entrusted to assess the relative merit of the persons whose names may be

considered for appointment as State Chief Information Commissioner and State Information Commissioner. The Hon'ble Supreme Court in the case of *Namit Sharma* (supra) has also upheld the constitutional validity of Section 15(3) of the said Act with certain riders. The Hon'ble Supreme Court has never held that the Selection Committee is not competent to assess the relative merit of the persons before it. Against the judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra), the State of Rajasthan and the Union of India have filed Review Petitions in November, 2012 and the Hon'ble Supreme Court has heard the Review Petitions and reserved the same for judgment. The proceedings of the Selection Committee dated 31-01-2012 was sent to the Leader of Opposition for signature, after he agreed during the meeting, but however, he has recorded his note of objection.

It is further stated that noting of objection by the Leader of Opposition is an afterthought, as he has agreed during the course of meeting on 31-01-2012 with regard to the candidates who were selected and recommended. Even in his note, it does not appear that he was not agreeable to the decision. His Excellency the Governor has never rejected the panel which contained the names of respondent nos.3 to 6, instead His Excellency the Governor observed that *"However the recommendation of the Committee in respect of following four listed below viz., 1. Sri Varre Venkateswarlu, 2. Smt. Lam Thanthiya Kumari 3. Sri S. Imtiaz Ahmed and 4. Smt. Vijaya Nirmala, prima facie appeared to attract infirmities under Section 15(6) of the RTI Act, 2005. Hence, their eligibility to appointment as Information Commissioners may kindly be examined afresh by the Committee with specific reference to provision of Section 15(6) of RTI Act, 2005."* The Selection Committee thereafter had met on 01-02-2013 and made specific recommendations to His Excellency the Governor, which was approved. The intimation about fixing the date for convening the meeting of the Selection Committee on

01-02-2013 was sent to all the members of the Selection Committee including the Leader of Opposition Sri Nara Chandra Babu Naidu on 31-01-2013 and it was served on the same day. Procedure followed by the Government in appointing respondent nos.3 to 6 as Information Commissioners is an exercise, which was done in continuation of the panel prepared by the Selection Committee on 31-01-2012. Since the judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) has prospective effect, the current exercise done by the Government in appointing respondent nos.3 to 6 as Information Commissioners, cannot be said to be contrary to the said judgment of the Hon'ble Supreme Court and Section 15(5) of the said Act. Therefore, the contention of the petitioners that the dictum of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) was not followed is not correct. It is further stated that political activities of respondent Nos.4 to 6 cannot be a ground for holding them to be disqualified to the post of State Information Commissioner as the Hon'ble Supreme Court has held that the same shall have effect 'post appointment'. In view of the fact that the selected candidates have given affidavits to the said effect, they would in no way be disqualified for appointment as State Information Commissioner under the said Act. The eligibility of respondent nos.3 to 6 has been considered in terms of the judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) and orders have been issued appointing them as State Information Commissioners.

5. Respondent Nos.3 to 6 have filed counter affidavit, which has been verified by respondent no.3 on behalf of rest of other respondents. In their counter affidavit, it is stated that there is no conflict of interest as averred by the petitioners in appointing them as State Information Commissioners for the reason that the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) held that "*As opposed to declaring the provisions of Sections 12(6) and 15(6) of the Act as unconstitutional, we would prefer to read these provisions as having*

effect 'post appointment'. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels." The Hon'ble Supreme Court held that the conditions prescribed under Section 15(6) of the Act shall have the effect 'post appointment'. Therefore, it is submitted that there cannot be any conflict of interest in their appointment. During the course of selection, their respective applications were examined in terms of the judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra). Any independent discharge of their duties being a test of their suitability post appointment and no instance of deviant conduct having been alleged in regard to discharge of their statutory duties, there is no merit in the contention of the petitioners that perceived political persuasion and affiliation of the candidates, who are sought to be selected, ought to be a disqualification for being considered for selection.

6. After hearing the learned counsel for the parties and going through the pleadings, the point for consideration in this matter is whether the appointment of respondent nos.3 to 6 is in accordance with the provision of Section 15 of the said Act and further in consonance with the judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) or not?

7. Before we discuss the rival contentions and the questions raised before us, we set out the relevant provision of Section 15 of the said Act as follows:

"15. Constitution of State Information Commission.-

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of-

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-

- (i) the Chief Minister, who shall be the Chairperson of the committee;
- (ii) the Leader of Opposition in the Legislative Assembly; and
- (iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation.- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession."

8. It will appear from sub-section (3) of Section 15 of the said Act that the Selection Committee consists of three members, namely the Chief Minister being the Chairperson of the Committee, the Leader of Opposition in the Legislative Assembly and a Cabinet Minister to be nominated by the Chief Minister. In this case, the Deputy Chief Minister of the State was nominated by the Chief Minister. It appears from

sub-section (3) that on the basis of the recommendation made by the Committee, His Excellency the Governor has to appoint both the State Chief Information Commissioner and State Information Commissioners. Therefore, the decision making process virtually vests with the Selection Committee.

Sub-sections (5) and (6) provide broadly the eligibility criteria for being

appointed as State Chief Information Commissioner and State Information Commissioner. Sub-section (5) provides that these officials must be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. Therefore, wide knowledge and experience in law is one of the criteria.

Sub-section (6) provides regarding disqualification for being appointed. It provides that the State Chief Information Commissioner or a State Information Commissioner shall not be a Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. Thus it is clear that the office of the State Chief Information Commissioner and that of State Information Commissioner is a full-fledged, whole time independent assignment and further it has been made free completely from the influence of any political environment. The Hon'ble Supreme Court in the case of *Namit Sharma* (supra), when a challenge to the aforesaid Section was thrown, has ultimately held as follows:

“108.2. The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the court to “read into” these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression “knowledge and experience” appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.

108.3. As opposed to declaring the provisions of Sections 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect “post appointment”. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the

appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.

108.4. There is an absolute necessity for the legislature to reword or amend the provisions of Sections 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make them in consonance with the constitutional mandates.

108.5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Sections 27 and 28 of the Act within a period of six months from today.

108.6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a "judicial tribunal" performing functions of "judicial" as well as "quasi-judicial" nature and having the trappings of a court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

108.7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

108.8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a "judicial member", while the other an "expert member". The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practised law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. The Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

108.9. The appointment of the judicial members to any of these posts shall be made "in consultation" with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

108.10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the Ministry concerned in the case of a State. The panel has to be prepared upon due advertisement and on a rational basis as aforerecorded.

108.11. The panel so prepared by the DoPT or the Ministry concerned ought to be placed before the High-Powered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High-Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

108.12. The selection process should be commenced at least three months prior to the occurrence of vacancy.

108.13. This judgment shall have effect only prospectively."

9. The Supreme Court judgment, which was delivered on 13-09-2012, has been given prospective effect. From the pleading it appears that the selection process was undertaken by the Selection Committee sometime in January, 2012. Therefore, the dictum of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) will not be applicable since the selection process was undertaken before the delivery of the judgment. However, it was not finalised and the matter was kept pending. Because of the judicial intervention by passing two orders by this Court, the selection as well as appointment was expedited and concluded.

10. In view of the prospective operation of the judgment of the Hon'ble Supreme Court, we have to examine whether the Selection Committee was duly constituted, and whether the Selection Committee took decision in the light of the provision of sub-section (5) of Section 15 of the said Act or not. In Section 15, there is no provision for advertisement or for wide publicity inviting applications from suitable candidates. This provision has been read down by the Hon'ble Supreme Court with expressed clarification of language of Section 15 as a whole. Therefore, the contention of the petitioners that since the Selection Committee did not advertise to invite suitable candidates in terms of the judgment of the Hon'ble Supreme Court, the selection process is bad, cannot be accepted. But then it has to be examined from the counter affidavit whether in terms of sub-section (5), any reasonable or fair step was taken to consider the

candidates from amongst the fields mentioned therein.

In paragraph 5 of the counter affidavit, the first respondent, namely the Principal Secretary to the Government, General Administration Department, has stated that *"The list of 8 persons selected by the Selection Committee has been sent to His Excellency the Governor, who was pleased to approve and appoint 4 persons as State Information Commissioners, and directed for examining afresh by the Committee with specific reference to the provision of Section 15(6) of the Act in respect of the remaining 4 persons, who are respondent nos.3 to 6 herein, in view of the representations received from various walks of life including the civil society activists"*. Therefore, it cannot be said that respondent nos.3 to 6 were only considered. While explaining the selection process, the first respondent has stated in paragraph 4 that *"The Selection Committee consisting of the Hon'ble Chief Minister, Hon'ble Deputy Chief Minister and Leader of Opposition as Members have met at 4-00 PM on 31-01-2012 in the Chambers of Hon'ble Chief Minister and that 8 persons from the applicants list were selected."* Thus a number of candidates were placed for consideration. It is also stated that in terms of the order of this Court dated 21-03-2012 passed in W.P.No.11295 of 2011, wherein this Court took note of the recommendation made by the Selection Committee for the appointment of State Information Commissioners and has directed to decide the matter finally, step for appointment was taken. Thereafter another writ petition was filed by respondent nos.3 to 6 before this Court seeking direction upon the Government to take steps to complete the process of appointment to the post of State Information Commissioner under the said Act. This Court on 18-09-2012 passed an order directing respondent nos.1 and 2 therein to consider and take appropriate decision in the matter of petitioners, namely respondent nos.3 to 6 herein, in accordance with law particularly with reference to Section 15(6) of the said Act, as construed by the Hon'ble Supreme Court in the case of *Namit Sharma* (supra). Pursuant to the said order, the cases

of respondent nos.3 to 6 have been examined in detail and after obtaining legal opinion, His Excellency the Governor has approved the selection of respondent nos.3 to 6 and their appointment was made. Thus we think that the choice of respondent nos.3 to 6, though not critically examined by the judicial order as no issues were raised at that time, was placed before the Court and His Excellency the Governor has taken a decision. Therefore, the objection with regard to the candidature of respondent nos.3 to 6 was neither decided nor examined by the Selection Committee even after sending the matter for reconsideration by His Excellency the Governor.

11. Since the appointment was made on the pressure of the judicial order, it cannot be contended that such appointment is valid or is in accordance with the directions of the Supreme Court. In this situation this Court is to consider whether the eligibility criteria of respondent nos.3 to 6 for being appointed as State Information Commissioner is satisfied with the test as mentioned in sub-section (6) of Section 15 of the said Act, read with the judgment of the Hon'ble Supreme Court as stated above. The Supreme Court, in no uncertain terms, while reading sub-section (6), has ruled that the disqualification mentioned in sub-section (6) will not be applicable at the time of consideration and selection, but it does apply after the appointment is made.

In our reading and understanding of above judgment of the Supreme Court, it postulates that if any disqualified person as mentioned in sub-section (6) is chosen and appointed, he or she must relinquish his/her position, immediately after appointment, if he or she uses to hold such office of profit. According to us this requirement is *sine qua non* before assumption of charge as independent functioning being one of basic object of legislature is to be ensured. In the petition, it has been specifically stated that "*Respondent No.4 is a Congress Party leader for several years and three Ministers recommended his appointment as Information Commissioner. Respondent No.5*

contested 2009 elections on TDP ticket against the present Chief Minister from Pileru Constituency in Chittoor District. Respondent No.6 contested 2009 elections from Nuzvid Constituency in Krishna District on behalf of Praja Rajyam Party and was unsuccessful. The other two respondents also belong to Congress Party". It is further stated that respondent nos.3, 4 and 5 are stated to be Advocates also. The aforesaid statement and averment made in the petition supported by document was not denied in the counter affidavit of either the first respondent or respondent nos.3 to 6. Therefore, going by the averment, without reading the judgment of the Hon'ble Supreme Court at the first instance since at the time of initiation of selection process the judgment was not delivered, they were disqualified. None of respondent nos.3 to 6 has placed any materials that even after their appointment, they have relinquished and/or dissociated the respective political allegiance and affiliation and post nor any of them, who are Advocates, has suspended his/her enrolment in the Bar Council. The Supreme Court judgment has been and has come later on, but since the provision was read down and the judgment was rendered before their appointment, their appointment with the aforesaid disqualification under sub-section (6) would not have stood in the way, had they and each of them relinquished and/or resigned and/or dissociated from their respective political and professional identity. In the counter affidavit of the first respondent, no material has been shown or annexed or even stated that they have done so.

It is their burden to prove under Section 106 of Indian Evidence Act as they have special knowledge on this issue. Learned Lawyer for respondent nos.3 to 6 contends that since there is no allegation and complaint of their independent functioning, even if there is such association with the political party or professional body, their appointment cannot be said to be invalid. We are unable to accept this contention since it is a mandatory provision of the statute and in particular with passing of the Supreme Court judgment that immediately

after the appointment, there cannot be any departure or deviation from it under any circumstance. The intention of the Legislature is to dissociate and/or disengage themselves from their respective political and professional association as well. Even in judgment of Supreme Court on review it has been reiterated.

12. Under the circumstances, we are unable to uphold the selection and appointment of respondent nos.3 to 6 as State Information Commissioners. Accordingly, we set aside the selection as well as the appointment. We direct the Government to undertake the selection process afresh in terms of the judgment of the Hon'ble Supreme Court in the case of *Namit Sharma* (supra) as per the stipulations in the paragraphs quoted above to the extent accepted by the Supreme Court by its judgment on review.

13. The public interest litigations are, accordingly, disposed of. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

14. At the time of delivery of the judgment, learned counsel for the State has submitted that the judgment of the Supreme Court in the case of *Namit Sharma* (supra), as noted above in our judgment, has been reviewed and the same was brought to our attention. Accordingly, we direct that fresh selection process has to be undertaken taking note of the judgment passed in the Review Petition. The entire selection process shall be completed within a period of six weeks from the date of communication of this order. Copy of the judgment of the Supreme Court passed in the Review Petition may be kept in the record.

K.J. SENGUPTA, CJ

K.C.BHANU, J

Date: 12-09-2013

YCR

[\[1\]](#) 2013 (1) SCC 745